

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ROBERT HAMPTON, an individual,

Plaintiff,

v.

NUSTAR MANAGMENT FINANCIAL  
 GROUP, dba HANDY CASH LOAN  
 CENTER, a Nevada Corporation; HANDY  
 CASH LEGAL SERVICE, an Unidentified  
 Business Entity; MR. LAWRENCE, an  
 individual; and UNKNOWN PERSONS 1  
 through 10, inclusive,

Defendants.

2:05-CV-0824-BES-GWF

**ORDER**

Currently before this Court is Plaintiff Robert Hampton's Motion to Dismiss Counterclaim (#15), which was filed on June 22, 2006. Defendants filed their Response (#18) on July 10, 2006. No Reply was filed.

**I. BACKGROUND**

Plaintiff Robert Hampton ("Hampton") commenced this action on June 31, 2005, alleging violations under the Fair Debt Collection Practices Act, the Truth In Lending Act, Nevada Deceptive Trade Practices Act and other state statutory violations (#1). Defendant Nustar Managment Financial Group, dba Handy Cash Loan Center ("Handy Cash") filed a Motion to Dismiss, which was denied on October 24, 2005 (#9). Handy Cash answered the Complaint and filed a Counterclaim, asserting a single cause of action for abuse of process (#12). Specifically, Handy Cash alleges that Hampton filed the lawsuit with an ulterior purpose

1 other than resolving a legal dispute and that Hampton knew that there was no basis for his  
2 various causes of action but sought to coerce a settlement from Handy Cash, using a Handy  
3 Cash employee's guilty plea in a prior proceeding as leverage in settling the action. Handy  
4 Cash also alleges that Hampton's filing of the current lawsuit was a willful act in the use of the  
5 legal process not proper in the regular conduct of the proceeding because Hampton failed to  
6 dismiss the proceedings despite his knowledge that his claims had no basis.

7 As a result of Hampton's conduct, Handy Cash claims it sustained money damages and  
8 irreparable damage and harm to its reputation and business. Handy Cash is also claiming  
9 Hampton's actions were prompted by malice and that his actions entitle Handy Cash to  
10 punitive damages.

## 11 II. ANALYSIS

12 Hampton moves to dismiss Handy Cash's Counterclaim (#12) pursuant to Federal Rule  
13 of Civil Procedure 12(b)(6). The purpose of a motion to dismiss under Rule 12(b)(6) is to test  
14 the legal sufficiency of the complaint. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001).  
15 Dismissal under Rule 12(b)(6) is proper only when a complaint exhibits either a "lack of a  
16 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal  
17 theory." Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). The Court must  
18 accept as true all material allegations in the complaint as well as all reasonable inferences that  
19 may be drawn from such allegations. LSO, Ltd. v. Stroh, 205 F.3d 1146, 1150 (9th Cir. 2000).  
20 The Court must also construe the allegations of the complaint in the light most favorable to the  
21 nonmoving party. Shwarz v. United States, 234 F.3d 428, 435 (9th Cir. 2000).

22 In his Motion to Dismiss Counterclaim (#15), Hampton raises three grounds for relief  
23 under Rule 12(b)(6). First, Hampton argues that Handy Cash's Counterclaim must be  
24 dismissed because it was in contravention of Fed.R.Civ.P. 13(a) governing compulsory  
25 counterclaims. Second, Hampton argues that Handy Cash has failed to state a cause of  
26 action for abuse of process. Finally, Hampton argues that the Court should decline  
27 supplemental jurisdiction pursuant to 28 USC § 1367(c). The Court now considers each of  
28 these grounds for dismissal.

1 **A. Compulsory Counterclaim.**

2 Rule 13(a) of the Federal Rules of Civil Procedure concerning compulsory  
3 counterclaims states in relevant part: “A pleading shall state as a [compulsory] counterclaim  
4 any claim which at the time of serving the pleading the pleader has against any opposing  
5 party, if it arises out of the transaction or occurrence that is the subject matter of the opposing  
6 party's claim.....” Hampton asserts that Handy Cash’s abuse of process claim cannot be  
7 considered a compulsory counterclaim to his underlying action because the state law claim  
8 of abuse of process, which was raised in the counterclaim, has no independent basis for  
9 federal jurisdiction and is not substantially related to the claims in Hampton’s complaint.

10 In Nevada, the elements of an abuse of process claim are: “(1) an ulterior purpose by  
11 the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal  
12 process not proper in the regular conduct of the proceeding.” LaMantia v. Redisi, 118 Nev.  
13 27, 30, 38 P.3d 877, 879 (2002). In this case, to prove “abuse of process” arising out of the  
14 underlying action, Handy Cash would have to demonstrate that Hampton had an ulterior or  
15 improper purpose in pursuing his action. Id. The presence of a legitimate justification for that  
16 action, suing to address improper debt collection activities by Handy Cash, would greatly  
17 influence the determination of whether Hampton’s purpose was wrongful. Hence, the similarity  
18 of the facts necessary for the determination of both actions reveals that Hampton’s substantive  
19 claims and Handy Cash’s abuse of process claim stem from the same basic controversy  
20 between the parties.

21 The Ninth Circuit supports this determination that an abuse of process claim is a  
22 compulsory counterclaim. The Ninth Circuit has held that although the merits of the  
23 substantive claim are not controlling on the question of abuse of process, they are necessarily  
24 significant in the assessment of a possible ulterior motive and therefore, the abuse of process  
25 claim is a compulsory counterclaim to the underlying action. Pichoro v. Prudential Insurance  
26 Company of America, Inc., 827 F.2d 1246, 1253 (9<sup>th</sup> Cir. 1987). The Ninth Circuit specifically  
27 rejected a line of cases that refused to find an abuse of process claim to be a compulsory  
28 counterclaim. Pichoro, 827 F.2d at 1252. Here, Handy Cash has filed its Counterclaim

1 consistent with the procedural requirements of Rule 13(a). Hampton's argument in this  
2 regard is therefore rejected.

3 **B. Abuse of Process Claim.**

4 Hampton also argues that Handy Cash has failed to plead facts that give rise to the  
5 cause of action of "abuse of process." As stated above, the elements of an abuse of process  
6 claim are: "(1) an ulterior purpose by the defendants other than resolving a legal dispute, and  
7 (2) a willful act in the use of the legal process not proper in the regular conduct of the  
8 proceeding." LaMantia, 118 Nev. at 30. An "ulterior purpose" includes any "improper motive"  
9 underlying the issuance of legal process. Dutt v. Kremp, 111 Nev. 567, 575-576, 894 P.2d 354  
10 (1995), overruled on other grounds by LaMantia v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 879  
11 (2002); see *a/so*, Laxalt v. McClatchy, 622 F.Supp. 737, 751 (D.Nev.1985).

12 The action for abuse of process hinges on the misuse of regularly issued process.  
13 Nevada Credit Rating Bureau, Inc. v. Williams, 88 Nev. 601, 606, 503 P.2d 9 (1972). The  
14 mere filing of a complaint itself is insufficient to establish the tort of abuse of process. Laxalt  
15 v. McClatchy, 622 F.Supp. 737, 752 (D.Nev.1985). Instead, the complaining party must  
16 include some allegation of abusive measures taken after the filing of the complaint in order to  
17 state a claim. Id.

18 In this case, Handy Cash fails to plead any facts that would support an allegation that  
19 Hampton engaged in an improper act in the use of the process in the regular prosecution of  
20 the proceedings. Although Handy Cash alleges that Hampton had an ulterior motive or  
21 purpose for filing the actions against it, Handy Cash fails to allege any abusive measures  
22 taken after the filing of the complaint that would establish a willful act of process not proper in  
23 the regular conduct of the proceeding. Handy Cash merely alleges that the willful act was the  
24 lawsuit and the improper purpose was Hampton's failure to dismiss the proceedings despite  
25 his knowledge that his claims have no basis. This is insufficient under Nevada law.

26 Furthermore, maintaining a lawsuit for the ulterior purpose of continuing litigation as a  
27 lever to obtain a settlement is not an improper motive and would not demonstrate any ulterior  
28 purpose other than resolution or settlement of the suit which is an acceptable use of process.

1 Rashidi v. Albright, 818 F.Supp. 1354, 1359 (D.Nev.,1993); Dutt v. Kremp, 844 P.2d 786  
2 (Nev.1992). Therefore, Handy Cash has failed to state an essential element of its abuse of  
3 process claim and Hampton's Motion to Dismiss is granted with respect to Handy Cash's  
4 counterclaim for abuse of process.

5 ***C. Supplemental Jurisdiction.***

6 Having granted Hampton's Motion to Dismiss the Counterclaim on the failure to  
7 state a claim for abuse of process, the Court does not need to reach the issue of whether it  
8 should deny supplemental jurisdiction of the state law claim.

9  
10 **III. CONCLUSION**

11 Based on the foregoing,

12 IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss Counterclaim (#15) is  
13 granted.  
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15 DATED: This 8<sup>th</sup> day of January, 2007.

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20 UNITED STATES DISTRICT JUDGE  
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